

(3) Remarks

Reconsideration and allowance of claims 1-3, 6-11 and 1420, all of the claims pending in this application, are respectfully requested in view of the following remarks.

No claims are added by this paper.

Claims 4, 5, 12 and 13 are canceled.

Claims 1, 3, 6 and 16 have been amended. The amendments are fully supported by the specification, *e.g.*, in paragraphs [0034] and [0035].

The examiner has made a thorough analysis of the application and the prior art, and while applicants do not agree fully with it, note that it has caused the careful reconsideration of the claim language to arrive at the language now claimed which is believed to demonstrably distinguish from the prior art and all that it fairly suggests.

The claims were rejected under 35 USC §112, second paragraph, and have been amended to obviate any basis for rejection in this regards. Applicants have adopted more positive and less relative language.

Claims 16-20 were also rejected under 35 USC §102(b) as being anticipated by Pintauro, *et al.*

While applicants repeat their previous arguments by incorporating them by reference, they note especially here that the amended claim language of “consisting of” is meant to clarify that the dry mix of the claims does not contain the significant amounts of acid which is central to the description of Pintauro, *et al.*

Also, claim 16 positively states that the “dry blend” is “capable of producing an aerated confection characterized, after processing ...with less *trans*-to-*cis* isomerization in the gelatin

than would occur in processing wherein gelatin and sucrose are mixed after forming solutions of each..."

Claims 1, 2 and 5-15 have been rejected under 35 USC §103 as defining an invention which is obvious from Zietlow, *et al.* (United States Patent No. 6,432,460) in view of Addesso (United States Patent No. 3,362,830). This rejection is respectfully traversed for the reasons already given and in view of the amendments to the claims.

The amendments address processing improvements of the invention which enable, in the presence of relatively little water as used for marshmallow production, the hydration of the gelatin by free water before all of it is taken up in the solution of the sugar. By conducting the hydration step at low temperature to an effective degree of gelatin hydration, abusive temperatures as would cause loss of bloom due to isomerization are avoided. Nowhere is this taught or suggested by the art. Thus, the steps necessary to achieve improved hydration with less bloom loss are more clearly set out.

The improvements of the invention are shown as effective in producing results not attainable by the prior art – thus, unexpected results – in Examples 5-7.

Claims 3 and 4 have been rejected under 35 USC §103 as defining an invention which is obvious from Zietlow, *et al.* (United States Patent No. 6,432,460) and Addesso (United States Patent No. 3,362,830) in further view of Gajewski (United States Patent No. 4,251,561). This rejection is respectfully traversed for the reasons of record and those noted above for the amended claims.

Claims 16-20 have been rejected under 35 USC §103 as defining an invention which is obvious from Addesso (United States Patent No. 3,362,830) in view of Zietlow, *et al.* (United States Patent No. 6,432,460). This rejection is respectfully traversed for the reasons of record and those noted above for the amended claims.

For all of the rejections under 35 USC §103, there is a lack of motivation provided to the skilled worker as to why he should take teachings from one reference and use them to modify another presumptively effective process. Certainly, there is no teaching or suggestion that if one were to make the proposed combinations, the unexpectedly improved results of the invention could be achieved. The process is by all means novel and results in untaught and unsuggested results. Therefore, it is believed that the claims as now amended meet the test for unobviousness as set out in the statute.

Applicants have made a significant contribution to the art of aerated confections, providing simplicity, economy and superior results. The claims set forth the invention clearly and concisely in terms which distinguish from the prior art. Accordingly, allowance of all claims is believed in order and such action is earnestly solicited.

Respectfully submitted,



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